

2002

State of Utah v. Laura Dable : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

LAURA DABLE,

Defendant/Appellant.

Case No. 20020096-CA

BRIEF OF APPELLEE

APPEAL FROM A JUDGMENT AND CONVICTION FOR TWO COUNTS OF POSSESSION OR USE OF A CONTROLLED SUBSTANCE IN VIOLATION OF UTAH CODE ANN. § 58-37-8(2)(a)(i) (SUPP. 2001), A THIRD DEGREE FELONY, AND UTAH CODE ANN. § 58-38-8(2)(e) (SUPP. 2001), A CLASS B MISDEMEANOR, IN THE FIRST DISTRICT COURT, RICH COUNTY, STATE OF UTAH, THE HONORABLE CLINT S. JUDKINS PRESIDING.

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Utah Court of Appeals

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Clerk of the Court

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

LAURA DABLE,

Defendant/Appellant.

Case No. 20020096-CA

BRIEF OF APPELLEE

JURISDICTIONAL STATEMENT

Defendant appeals her conviction of two counts of possession or use of a controlled substance in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 2001), a third degree felony, and Utah Code Ann. § 58-38-8(2)(e) (Supp. 2001), a class B misdemeanor, in the First District Court, Rich County, State of Utah, the Honorable Clint S. Judkins presiding. This Court has jurisdiction under Utah Code Ann. § 78-2a-3(2)(e) (1996 & Supp. 2001).

ISSUES PRESENTED ON APPEAL AND STANDARD OF REVIEW

Issue 1: Did the trial court correctly rule that Deputy Stacey's affidavit in support of the request for a search warrant was based on reliable information from credible sources?

Issue 2: Did the trial court properly find probable cause to search defendant's home based on her arrest for possession of controlled substances, her admission that she had purchased the drugs in Ogden and stopped at her home afterward and statements from reliable witnesses that she had sold drugs from her home on at least two previous occasions?

Issue 3: Was the magistrate's allegedly improper authorization of a nighttime, "no-knock" search harmless given that the search was conducted during the day and when defendant was not at home?

Standard of Review for All Three Issues: "We review the factual findings underlying the trial court's decision to grant or deny a motion to suppress evidence using a clearly erroneous standard. We review the trial court's conclusions of law based on these facts under a correctness standard.'" *State v. McArthur*, 2000 UT App 23, ¶ 12, 996 P.2d 555 (quoting *State v. Brown*, 853 P.2d 851, 854-55 (Utah 1992)). When reviewing a challenge to a search warrant, this Court "pay[s] great deference to the magistrate's determination." *State v. Vigh*, 871 P.2d 1030, 1033 (Utah App.1994). Such deference is appropriate because "[a] grudging or negative attitude by reviewing courts toward warrants' is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant." *Illinois v. Gates*, 462 U.S. 213, 236 (1983)) (citation omitted). "[T]he [F]ourth [A]mendment does not require that the reviewing court conduct a *de novo* review of the magistrate's probable cause determination[.] [I]nstead, it requires only that the reviewing court conclude 'that the magistrate had a substantial basis for . . .

[determining] that probable cause existed.”” *State v. Babbell*, 770 P.2d 987, 991 (Utah 1989) (quoting *Gates*, 462 U.S. at 238).

Issue 4: Assuming the trial court erred in finding the warrant sufficient, did it nonetheless properly deny the motion to suppress because officers acted in good faith in conducting the search?

Standard of Review: No standard of review applies because neither party addressed this argument below and the trial court had no reason to reach it, given the court’s ruling that the search warrant was not defective.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Constitutional provisions, statutes and rules relevant to this appeal are:

U.S. Const., amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Utah Code Ann. § 77-23-205(1) (1999)

Utah Code Ann. § 77-23-210(2) (1999)

The Utah statutory provisions are reproduced in Addendum A.

STATEMENT OF THE CASE

Defendant was charged by Information dated November 30, 2000, with possession or use of a controlled substance in a drug-free zone, a first degree felony in violation of

Utah Code Ann. § 58-37-8(2)(a)(1) & (2)(e) (Supp. 2001), and possession of drug paraphernalia in a drug-free zone, a violation of Utah Code Ann. § 58-37a-5(1) (Supp. 2001). R. 1-2. On January 26, 2001, defendant pleaded not guilty. R. 22, 28.

Defendant waived her preliminary hearing and filed a motion to suppress evidence seized from her trailer home. R. 25-44. After briefing and argument, the trial court denied the motion to suppress. R. 111-13.

Defendant entered a conditional guilty plea to two counts of possession or use of a controlled substance in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (Supp. 2001), a third degree felony, and Utah Code Ann. § 58-38-8(2)(e) (Supp. 2001), a class B misdemeanor. On December 13, 2001, the court imposed suspended prison terms and instead sentenced her to serve 30 days in jail and pay fines totaling \$1,400. R. 120-21. The jail term and fine were stayed pending appeal. R. 98, 100.

Defendant timely appealed. R. 105.

STATEMENT OF FACTS¹

Rich County Sheriff's Deputy Dale Stacey had a hot tip. On June 6, 2000, Deputy Stacey was contacted by Sheriff's Deputies Kim Clark and Jody Gardner of Lincoln County, Wyoming. The Wyoming deputies relayed information from an informant ("the Wyoming informant") who stated that Laura Dable (defendant), a resident of Randolph, Rich County, was planning a trip to Ogden, Utah, to purchase methamphetamine and marijuana, which she was planning to sell in Lincoln County. *See* Findings and Order, R. 111[a];² *see also* search affidavit, R. 18; Deputy's Report, Addendum D.

This was not the first time Deputy Stacey had heard defendant's name in connection with allegations of drug dealing. A little over a month earlier, Deputy Stacey

¹ The factual posture of this case is unusual because defendant did not request an evidentiary hearing or submit stipulated facts. Thus, the Statement of Facts is based on the trial court's Findings and Order Denying Defendant's Motion to Suppress Evidence ("Findings and Order"), R. 111-113, a copy of which is attached as Addendum B; the transcript from the argument on defendant's motion to dismiss, R. 125, a copy of which is attached as Addendum C; the Affidavit for search warrant, dated June 7, 2000, R. 14-19 ("Search affidavit"), a copy of which is attached as Addendum D; and the Rich County Sheriff's Office Deputy Report prepared by Deputy Dale Stacey, dated November 22, 2000 ("Deputy's Report"), attached as Addendum E. The Deputy's Report is cited even though it does not appear to be part of the record on appeal because it is clear that the report was before the trial court when it denied the motion to suppress. *See* R.125:14. Defendant has also cited the report and attached it to her brief as Appendix H. The State will move to supplement the record with the Deputy's Report. The facts culled from the above sources are stated in a light most favorable to the trial court's denial of the motion to suppress. *See, e.g., State v. Tetmyer*, 947 P.2d 1157, 1158 (Utah App.1997).

² The record in this case was numbered by hand and the second page of the court's Findings and Order is not numbered. Because the unnumbered page is between R. 111 and R. 112, the State will refer to it as "R. 111[a]".

had interviewed a man named Threll Orton, who had been arrested in Evanston, Wyoming, on charges of selling methamphetamine and marijuana. R. 18, 111; Deputy's Report. Orton told Deputy Stacey that he had purchased methamphetamine from a woman named "Laura" at her trailer home in Randolph on at least two occasions. R. 18, 111; Deputy's Report. Based on Orton's description, Deputy Stacey located the trailer and determined that the woman Orton referred to was the defendant, Laura Dable. R. 18; Deputy's Report.

On June 7, 2000, Deputy Clark informed Deputy Stacey that defendant had been arrested for possession of marijuana and methamphetamine during a traffic stop in Wyoming. R. 18, 111[a]; Deputy's Report. Deputy Clark also reported that, following her arrest, defendant admitted she had purchased the drugs in Ogden and that she had stopped by her trailer home in Randolph before proceeding to Wyoming. R. 18, 111[a]; Deputy's Report.

Because defendant admitted she had stopped by her trailer home after purchasing the drugs in Ogden, and because drugs had reportedly been sold at the trailer previously, Deputy Stacey decided to seek a warrant to search the trailer. In his affidavit, Deputy Stacey stated:

Threll Orton informed your affiant that he had bought methamphetamine from Laura Dable at the trailer described in this affidavit on at least two occasions.

On 6-7-00 I spoke with Deputies Kim Clark and Jody Gardner from the Lincoln County sheriff's Office. They indicated that they were working on a drug case, and that a confidential informant told them that Laura Dable was planning on picking up some drugs in Ogden on 6-6-00 and bringing

them into Lincoln County to sell. On 6-7-00, Dable was stopped and her vehicle searched. The officers located approximately 4 ounces of marijuana and 4 grams of methamphetamine.

Dable informed the officers that she had bought the drugs in Ogden on 6-6-00 and had stopped at her residence in Randolph for several hours before going on up to Lincoln County. Your affiant feels there is probable cause to believe some of the drugs bought in Ogden were left in the trailer because there have allegedly been sales made from the trailer to people in this county.

R. 18.

The magistrate signed the warrant authorizing search of defendant's trailer home.

Upon execution of the search warrant, officers seized marijuana and methamphetamine as well as numerous other items that appeared to be drug paraphernalia. R. 17.

The defendant moves to suppress all the items seized from her trailer because the search affidavit was based on "unverifiable and unreliable" factual assertions made by "untested and questionable informants," which facts were "uncritically accepted" by the magistrate in approving the search warrant. R. 38. She also claimed that the state negligently or intentionally omitted critical information that would have affected the magistrate's probable cause determination. *Id.* Defendant also complained that the search warrant form was not completely filled out by the magistrate and that the omissions improperly authorized a night-time, no-knock search. R. 55-56; 125:3.

Following briefing and oral argument, the trial court denied the motion to suppress. The court rejected defendant's challenge to the credibility of the sources of information in the affidavit, noting that information obtained from law enforcement officers in the course of an investigation is presumptively reliable and sufficient to

support probable cause. R. 112. The court also determined that any defect due to the fact that the warrant was not completely filled out was harmless error. R. 113.

SUMMARY OF ARGUMENT

Point I: The trial court correctly ruled that the Wyoming sheriff's deputies provided information that was presumptively reliable because it was communicated by peace officers in the course of an investigation concerning defendant's arrest for possession of controlled substances. Although the trial court did not reach the credibility of the two informants---Orton and the Wyoming confidential informant---because it determined that information provided by the Wyoming deputies was sufficient to establish probable cause, the informants nonetheless provided credible, reliable information which may also be relied upon by this Court in finding probable cause for the search.

Point II: The trial court correctly found probable cause to search defendant's trailer home. Following her arrest in Wyoming for possession of controlled substances, defendant admitted that she had purchased the drugs in Ogden and that she had stopped at her home before driving to Wyoming. Information from Orton and the Wyoming informant indicated defendant was involved in the sale of drugs and that she had sold drugs from her home. These facts provided more than enough evidence to establish a fair probability that drugs or other relevant evidence would be found at defendant's home.

Point III: Defendant's claim that the magistrate improperly authorized a nighttime, "no-knock" search is frivolous. Whether the search warrant improperly

authorized a nighttime, no-knock search is inconsequential given that the search was actually conducted during the daytime while defendant was not home to respond to a knock. Accordingly, any error was harmless.

Point IV: The “good faith exception” to the warrant requirement need not be invoked here because the warrant was supported by probable cause. Nonetheless, if the good faith exception were applied, this Court should find that the deputies who executed the search warrant acted on a good faith belief that the warrant was properly issued by a neutral magistrate. Thus, even if the warrant were deemed defective, the evidence need not be suppressed.

ARGUMENT

I. THE INFORMATION IN DEPUTY STACEY’S AFFIDAVIT WAS BASED ON RELIABLE INFORMATION FROM CREDIBLE SOURCES.

Defendant claims that information from Wyoming sheriff’s deputies, Threll Orton and the Wyoming informant was unreliable and did not establish probable cause for the search of the trailer. Aplt. Br. at 18-24. Defendant is incorrect. Statements from law enforcement officials provided in the course of an investigation are presumptively reliable. And while information from the informants is not presumptively reliable, their statements were still properly relied upon by Deputy Stacey and the magistrate because they were corroborated by other known facts.

A. Statements of Law Enforcement Officials in the Course of an Investigation are Presumptively Reliable.

Defendant attacks the reliability of the information from the Wyoming sheriff's deputies as based largely on uncorroborated "heresay" [sic], which established "only" that defendant had been arrested and the drugs she had purchased in Ogden confiscated. Aplt. Br. at 23-24. This attempt to minimize the importance of the Wyoming deputies' information in establishing probable cause for the search is unavailing.

The principal sources of the information included in the search affidavit were Deputies Kim Clark and Jody Gardner of the Lincoln County, Wyoming, Sheriff's Office. On June 7, 2000, Clark and Gardner informed Deputy Stacey that defendant had been arrested and that marijuana and methamphetamine had been seized. R. 18, 111[a]. They further stated that defendant had admitted purchasing the drugs in Ogden and that she had stopped at her home in Randolph before proceeding to Wyoming, where she was arrested. *Id.*

As the trial court correctly concluded, these statements, as communications between law enforcement officers in the course of an investigation, are presumptively reliable. R. 112. The Utah Supreme Court stated: "[T]here is a presumption that law enforcement officers will convey information to each other truthfully." *State v. Nielsen*, 727 P.2d 188, 192 (Utah 1986). This presumption has been accepted by the United States Supreme Court and lower courts in virtually every jurisdiction. *See, e.g., United States v. Ventresca*, 380 U.S. 102, 111 (1965) ("Observations of fellow officers of the Government

engaged in a common investigation are plainly a reliable basis for a warrant applied for by one of their number”); 2 W. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment*, § 3.5(a) (3d ed. 2003) (“[L]ower courts have consistently held that another law enforcement officer is a reliable source and that consequently no special showing of reliability need be made as a part of the probable cause determination”); see *Nielsen*, 727 P.2d at 192 (“[T]here is a presumption that law enforcement officers will convey information to each other truthfully”); see also *Ventresca*, 380 U.S. at 111; LaFare, § 3.5(a). Accordingly, the reviewing magistrate correctly relied upon those statements in determining there was probable cause to search defendant’s trailer home.

B. Reliable Informant Statements Were Properly Included in Deputy Stacey’s Affidavit.

Defendant claims the statements from Threll Orton and the Wyoming informant were unreliable because the affidavit did not disclose the time or context for the statements or disclose any background that would establish credibility. Aplt. Br. at 19. Defendant also claims the affidavit should have revealed that Orton was under arrest at the time he made the allegations. Aplt. Br. at 20. “The affidavit reveals nothing about Threll Orton except his name and his uncorroborated allegations of buying drugs at Defendant’s trailer.” Aplt. Br. at 19.³ These claims lack merit.

³ The trial court did not address these contentions because it found the presumptively reliable information from the Wyoming deputies sufficient to establish probable cause. R. 112. The trial court is correct. Nonetheless, the State discusses the reliability of Orton and the Wyoming informant because their statements were also properly relied upon by the magistrate and bolster the existence of probable cause. See

The reliability of an informant is assessed under the totality of the circumstances and in light of factors articulated by this Court in *Kaysville City v. Mulcahy*, 943 P.2d 231, 235-36 (Utah App.1997).⁴ Under *Mulcahy*, reliable informants are those who are identified by name, have a clear basis for knowing the information they provide and offer detailed statements that are at least partially corroborated by investigating officers or deputies. *Id.* Application of these factors demonstrates that Orton and the Wyoming informant were properly relied upon by the magistrate in determining probable cause for the search.

Threll Orton. Under the first *Mulcahy* factor, an identified “citizen-informant” whose basis of knowledge is clearly stated is high on the reliability scale, while a confidential informant, “whose basis of knowledge and veracity are typically unknown,” is toward “the low-end of the reliability scale.” *Id.* at 235 (citation and internal quotation marks omitted). Orton, although apparently not a “citizen informant” who “volunteer[ed] information out of concern for the community,” *id.*, still shows indicia of

State v. Weeks, 2000 UT App 273, ¶ 10, n.6, 12 P.3d 110 (“[W]e may affirm the trial court’s ruling ‘if it is sustainable on any legal ground . . . even [if different] from that stated by the trial court.’” (citing *Limb v. Federated Milk Producers Ass’n*, 461 P.2d 290, 293, n.2 (1969))).

⁴ This Court has stated that the three *Mulcahy* factors apply where “the information obtained from [an] informant [] is the *primary support* for the search warrant. . .” *State v. DeLuna*, 2001 UT App 401, ¶ 9, 40 P.3d 1136 (emphasis added). Here, because the informants do not provide the primary support for the search warrant, strict application of *Mulcahy* is not required. Nonetheless, the *Mulcahy* factors are illuminating and will be used to articulate the basis for the reliability of the non-police sources of information.

reliability under the first factor because he is fully identified and his basis of knowledge clearly stated. *See* R. 18, 111; Deputy's Report.

The second *Mulcahy* factor concerns whether “the informant gave enough detail about the observed criminal activity to support a [warrant].” *State v. Deluna*, 2001 UT App 401, ¶ 19, 40 P.3d 1136 (alteration in original; citation omitted). Under this factor, it is clear that the information from Orton, although summarized in the search affidavit, provided details sufficient to identify defendant and pinpoint the location of the trailer where Orton purchased the drugs. R. 18, 111; Deputy's Report. Additionally, Orton's information was also “more reliable [because] it is apparent that [he] observed the details personally, instead of simply relaying information from a third party.” *Mulcahy*, 943 P.2d at 236.

Finally, under the third *Mulcahy* factor—corroboration—Deputy Stacey confirmed the essential details of Orton's account by determining there was a woman named Laura who lived at the trailer Orton described. *Id.*; *see* R. 18, 111; Deputy's Report. Orton's statements were further corroborated by defendant's arrest for possession of methamphetamine—one of the drugs Orton claimed he purchased at defendant's trailer—as well as the report from the Wyoming informant that defendant was planning to sell the drugs in Wyoming.

Despite Orton's strong showing of reliability under *Mulcahy*, defendant presses her challenge to his reliability on several points. For example, defendant points to alleged discrepancies between the search affidavit and the Deputy's Report. *Aplt. Br.* at 19. She

notes that although Orton states that he purchased the drugs from “a woman in Randolph named Laura,” the search affidavit states that he “bought methamphetamine from Laura Dable at the trailer described int his affidavit on at least two occasions.” R. 18; Deputy’s Report.

However, defendant omits the fact that Deputy Stacey states in his report that he investigated Orton’s statement and was able to locate the described trailer and determine that it belonged to defendant. *See Deputy’s Report*. Thus, his representation to the magistrate in the search affidavit that Orton purchased the drugs from Laura Dable was supported by his independent investigation of Orton’s statement.

More fundamentally, defendant’s focus on Orton’s inability to provide the full name of the person who sold the drugs misses the point. The real issue for purposes of determining the validity of the search warrant is not who lives at the home, but whether it was the place where he purchased the drugs. Because Orton’s description was clearly adequate to locate the trailer, his inability to fully identify who lived there is of only peripheral importance.

Defendant also argues that the search affidavit should have disclosed that Orton was under arrest when he told Deputy Stacey he had purchased drugs at defendant’s trailer home. “This was not a case where a disinterested citizen supplied the information.” *Aplt. Br.* at 20. But this characterization of Orton’s alleged bias is mere speculation. Although Orton’s custody status raises questions concerning his motives for speaking to Deputy Stacey, there is nothing in the record to establish what those motives

might be. In the absence of any record to the contrary, this Court should not accept defendant's invitation to speculate about the possible ulterior motives Orton might have had. *See State v. Miller*, 718 P.2d 403, 405 (Utah 1986) (per curiam) (if "appellant fails to provide an adequate record on appeal, [we] must assume the regularity of the proceedings below"); *State v. Rawlings*, 829 P.2d 150, 152-53 (Utah App. 1992) ("In the absence of an adequate record on appeal, we cannot address the issues raised and presume the correctness of the disposition made by the trial court"), *overruled on other grounds by State v. Gordon*, 913 P.3d 350, 357 n.3 (Utah 1996).

Finally, defendant attacks Orton's reliability by attempting to liken this case *U.S. v. Danhauer*, 229 F.3d 1002, 1006 (10th Cir. 2001), in which the court held that a search affidavit based almost entirely on information gleaned from a single confidential informant did not establish a nexus between illegal activity and defendant's residence. *Id.* at 1007-08.⁵ Defendant claims that there are "striking similarities" between her case and *Danhauer* because Stacey's affidavit, like that in *Danhauer*, was based on uncorroborated, "repetitive and tenuous facts" supplied by an unreliable informant. Aplt. Br. at 20-21.

Danhauer, however, is readily distinguishable. First, the identity of the informant in *Danhauer* was never revealed to the magistrate, *id.* at 1006, while Orton was identified by name in Deputy Stacey's affidavit. Second, where the basis for the *Danhauer*

⁵ The court, nonetheless, upheld the search based on the "good faith exception." *U.S. v. Danhauer*, 229 F.3d 1002, 1007-08 (10th Cir. 2001)

informant's knowledge of the clandestine lab was never disclosed, *id.*, Deputy Stacey stated in his affidavit that Orton knew of defendant's drug-dealing activities because he had purchased controlled substances from her at her home. Finally, there was no significant corroboration of the information provided by the *Danhauer* informant. *Id.* Here, by contrast, virtually all significant details of Orton's statements were corroborated. As noted above, Deputy Stacey confirmed the existence and location of the trailer home where Orton claimed to have purchased drugs and that a woman named Laura lived there. Defendant's involvement in buying and selling drugs was also corroborated, in part, by her own admissions.

The Wyoming informant. As defendant points out, confidential informants are often viewed with some skepticism because their veracity or basis of knowledge may be unknown. *See Mulcahy*, 943 P.2d at 235 ("[A]nonymous tips are toward 'the low-end of the reliability scale'") (citation omitted). However, in this case, the reliability of the information supplied by the Wyoming informant was independently bolstered by the fact that most of it had been corroborated at the time Deputy Stacey requested the search warrant. Corroboration of some of the information supplied by an informant increases the likelihood that the remaining information will also be true. *See, e.g., State v. Weinberg*, 575 A.2d 1003, 1008 (Conn.) ("The theory of corroboration is that a statement which has been shown true in some respects is reasonably likely to be true in the remaining respects") (citation and internal quotation marks omitted), *cert. denied*, 498 U.S. 967 (1990). The information from the Wyoming informant indicated that defendant was

planning to purchase drugs in Ogden on June 6, 2000 and that she intended to sell the drugs in Wyoming. *Id.* On June 7, 2000, when Deputy Stacey presented the search affidavit to the magistrate, defendant had been arrested in Wyoming for possession of marijuana and methamphetamine, which she admitted she had purchased in Ogden. *Id.* Because defendant's arrest and admissions partially corroborated statements from the informant, the remaining uncorroborated claim—that defendant's purpose in coming Wyoming was to sell drugs—is also entitled to some credence. This fact is important because it indicates defendant was involved in the sale of marijuana and methamphetamine and bolsters Orton's claim that he had purchased drugs at defendant's trailer on at least two occasions.

Thus, contrary to defendant's claims, the sources cited by Deputy Stacey in the search affidavit were reliable. Accordingly, defendant's claim that the magistrate erred in relying on information from those sources in finding probable cause to search the trailer is meritless.

II. THE TOTALITY OF FACTS PRESENTED IN THE AFFIDAVIT—INCLUDING DEFENDANT'S ARREST FOR POSSESSION OF CONTROLLED SUBSTANCES, HER ADMISSION THAT SHE HAD JUST PURCHASED DRUGS AND THAT SHE HAD STOPPED BY HER TRAILER AFTERWARD—ESTABLISHED PROBABLE CAUSE TO SEARCH THE TRAILER.

Defendant claims that the affidavit supporting the request for a search warrant was defective because it “failed to establish reasonable grounds to believe that contraband or

evidence of a crime would be found at defendant's residence." Aplt. Br. at 14. This claim lacks merit.

When reviewing the adequacy of an affidavit in support of a search warrant,

[t]he magistrate's task is to decide whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

State v. McArthur, 2000 UT App 23, ¶ 29, 996 P.2d 555 (quotations and citations omitted), *cert. denied*, 9 P.3d 170 (2000). When reviewing a challenge to a search warrant, this Court "pay[s] great deference to the magistrate's determination." *State v. Vigh*, 871 P.2d 1030, 1033 (Utah App.1994).

Under the totality of the circumstances, the magistrate correctly concluded there was a fair probability that evidence of illicit drug use or trafficking would be found at defendant's trailer. First, the magistrate knew that defendant was in custody on drug charges and that she had admitted purchasing the drugs in Ogden. R. 18, 111[a]. Although "probable cause to arrest does not *automatically* provide probable cause to search the arrestee's home," it does, under some circumstances, increase "the likelihood that that person's residence contains evidence of the crime . . ." *U.S. v. Jones*, 994 F.2d 1051, 1055-56 (3rd Cir. 1993) (emphasis added).

Second, search of defendant's trailer was supported by information suggesting that defendant was not just a drug user, but a drug dealer. The Wyoming informant stated that defendant's trip to Wyoming was for the purpose of selling drugs. R. 18. Additionally,

Threll Orton informed Deputy Stacey that he had purchased methamphetamine at defendant's trailer on at least two occasions. *Id.* Because there was reliable information that defendant was a drug dealer, the magistrate properly found probable cause to search her home. As one court succinctly stated: "[I]n the case of drug dealers, evidence is likely to be found where the dealers live.'" *U.S. v. Terry*, 911 F.2d 272, 275 (9th Cir.1990) (citation omitted). This common sense observation that drug dealers will likely keep controlled substances and other evidence of illegal activities at their homes has been recognized by a number of courts. *See, e.g., United States v. Emmons*, 24 F.3d 1210 (10th Cir.1994) (affidavit sufficient where large quantities of marijuana made it reasonable to believe defendant was a dealer and officer stated that in his experience distributors keep records, packaging, and assets at home); *United States v. Pitts*, 6 F.3d 1366 (9th Cir.1993) (nexus can be inferred on probable cause affidavit establishing defendant's ongoing drug dealing and that place to be searched is his residence); *United States v. Restrepo*, 994 F.2d 173 (5th Cir.1993) (held there was probable cause to search defendant's home where affiant stated that in his experience "drug traffickers maintain records relating to drug activity at a place such as a home" and "that contraband, drug proceeds and other indicia of drug trafficking such as coded telephone numbers, photographs and firearms are secreted in safe places such as homes").

Third, the fact that defendant admitted she had stopped at her home after her drug purchase in Ogden and before her arrest also supports probable cause to search her home. Many courts have recognized that a defendant's arrest for selling drugs can create

probable cause to search the defendant's home, especially when the seller went to his home prior to the sale or the sale occurred near the home. *See, e.g., United States v. Hulett*, 22 F.3d 779, 781 (8th Cir.1994) (affirming probable cause to search defendant's home for records of "voluminous drug trafficking" based on telephone calls to defendant's home concerning drug transactions); *United States v. Corral*, 970 F.2d 719 (10th Cir.1992) (probable cause to search defendant's residence where she returned to her home after arranging a drug sale, presumably to retrieve the drugs); *People v. Hakel*, 870 P.2d 1224, 1229 (Colo. 1994) (probable cause to search defendant's home where defendant traveled directly from home to motel where sale was made); *see also* LaFave, *supra*, § 3.7(d) and n. 143-44.

Taken together, the facts provided by Deputy Stacey in support of his request for a search warrant are more than sufficient to establish probable cause to search defendant's trailer. The totality of the circumstances—defendant's arrest for possession of controlled substances, her admission that she purchased the drugs in Ogden and that she had stopped at her trailer before her arrest in Wyoming, and information from two informants suggesting defendant was a drug dealer and had sold drugs from the trailer on at least two occasions—creates the strong and entirely reasonable inference that illegal substances or other relevant evidence would be discovered at her residence. Accordingly, defendant's attack on the magistrate's probable cause determination is without merit.

III. WHETHER THE SEARCH WARRANT IMPROPERLY AUTHORIZED A NIGHTTIME, “NO-KNOCK” SEARCH IS INCONSEQUENTIAL GIVEN THAT THE SEARCH WAS ACTUALLY CONDUCTED DURING THE DAYTIME WHILE DEFENDANT WAS NOT HOME.

Defendant claims some sections of the search warrant were improperly left blank and that these “omissions” violated Utah law because they improperly authorized a nighttime, “no-knock” search. Aplt. Br. at 24-25. This argument is frivolous because the search was conducted during the day while defendant was not at home.

The search warrant was prepared by using a standard form, portions of which may be filled in by the requesting officer and the magistrate. R. 11. One section of the form gives the magistrate the option of authorizing execution of the warrant either during the “daytime” or “anytime, day or night.” *Id.* Another section allows the magistrate to indicate whether the officers “(are) [or] (are not)” authorized to execute a no-knock search. These sections were not filled in and defendant apparently believes that the magistrate’s failure to circle or choose among the listed alternatives means the warrant authorized the execution of the warrant without notice and at any time, day or night. Aplt. Br. at 24-25.

These claims are without merit. First, the claim that the warrant somehow improperly authorized a nighttime search is moot because the warrant was not served at night. A defendant suffers no prejudice when an improper nighttime search warrant is served during the day. *See, e.g., Salt Lake City v. Trujillo*, 854 P.2d 603, 609 (Utah App. 1993) (a defendant suffers no prejudice when search warrant improperly authorizing

nighttime search is executed during the day). Defendant admits that the search warrant was served during the daylight hours at 6:32 p.m. June 7, 2000. R. 125:12.⁶ Thus, even if the warrant improperly authorized a nighttime search, defendant suffered no prejudice.⁷

Defendant's claim that the search warrant improperly authorized a "no-knock" search fails for similar reasons. Ordinarily, an officer serving a search warrant may not forcibly enter a residence unless, after giving notice of his authority to search, he determines no one is home, in which case he may "use such force as is reasonably necessary to enter; . . ." Utah Code Ann. § 77-23-210(2). Here, defendant was in jail in Wyoming and so was not at home when the search was conducted. Thus, defendant, not surprisingly, has no idea whether the officers knocked before entering; nor has she introduced any evidence to suggest they did not. Absent some evidence to the contrary, this Court should assume the search warrant was served properly and that the officers

⁶ "Daytime" is currently defined as the hours between 6 a.m. and 10 p.m. Utah Code Ann. § 77-23-201(1) (Supp. 2002). Prior to adoption of that statutory definition, the term "night" had been judicially defined as one-half hour after sunset until one-half hour before sunrise. *State v. Simmons*, 844 P.2d 614 (Utah App. 1993). Under either definition, the search warrant was clearly served during the daytime.

⁷ Defendant also seems to suggest that the search was improper even though it began in the daytime because it did not conclude until 10:16 p.m., which defendant contends was "night." Aplt. Br. at 25. This argument fails because Utah law imposes time limits only for *serving* a warrant, not for the duration of the search. *See, e.g.*, Utah Code Ann. § 77-23-205(1) ("The magistrate shall insert a direction in the warrant that it be *served* in the daytime . . .") (emphasis added). This interpretation of the time limits in the Utah statute is consistent with the interpretation of similar requirements in other states. *See, e.g., Shope v. State*, 396 A.2d 282, 288 (Maryland App. 1979) (search executed pursuant to a "daytime" search warrant not improper because search concluded after dark).

gave proper notice before entering defendant's trailer. *See, e.g., Miller*, 718 P.2d at 405 (if "appellant fails to provide an adequate record on appeal, [we] must assume the regularity of the proceedings below"). But even assuming the officers conducted an improper no-knock search, the error is harmless where the home is unoccupied. *State v. Buck*, 756 P.2d 700 (Utah 1988); *see also, Trujillo*, 854 P.2d at 702 ("[I]t is of no consequence that the police failed to announce their authority and purpose prior to entry if no one was present therein at the time") (citing 2 W. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment*, § 4.8(b), at 277).

**IV. ALTHOUGH UNNECESSARY IN THIS CASE, THE
"GOOD FAITH EXCEPTION" TO THE WARRANT
REQUIREMENT WOULD VALIDATE THE SEARCH
BECAUSE OFFICERS ACTED IN GOOD FAITH.**

Finally, defendant argues that this Court should not apply the so-called "good faith exception" to the warrant requirement to validate the search in the event that the warrant is deemed defective. *Aplt. Br.* at 25-28. In the State's view, this Court need not reach this issue because the search warrant was supported by probable cause and so the good faith exception is unnecessary. Nonetheless, in the interest of thoroughness, the State will briefly address defendant's claim.

Under the good faith exception, evidence seized pursuant to a defective search warrant need not be suppressed if the executing officer acted with an objective, good faith belief that the warrant was properly issued by a neutral magistrate. *See United States v. Leon*, 468 U.S. 897, 920-24 (1984). "There is a presumption that when an officer relies

upon a warrant, the officer is acting in good faith. . . . It is only when the officer's reliance on the warrant is 'wholly unwarranted' that good faith is absent." *State v. Horton*, 848 P.2d 708, 711 (Utah App. 1993) (citation omitted).

The Supreme Court recognizes four situations in which an officer would *not* have reasonable grounds for believing a warrant was properly issued: (1) the issuing magistrate is misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; (2) the issuing magistrate wholly abandons his judicial role and fails to perform his neutral and detached function; (3) the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; (4) the warrant is so facially deficient that it failed to particularize the place to be searched or the things to be seized. *See Leon*, 468 U.S. at 922-23. In these situations, the good-faith exception to the exclusionary rule does not apply.

None of the *Leon* scenarios apply in this case. Defendant has presented no evidence to suggest that the magistrate was misled or that Deputy Stacey intentionally or recklessly omitted important facts. *See Horton*, 848 P. 2d at 711 ("The mere omission of information that could have been included in an affidavit does not necessarily amount to an intent to mislead"). Nor is there any suggestion that the magistrate was not neutral and detached in reviewing Stacey's affidavit. The affidavit contained numerous details from several sources, including law enforcement officials, and clearly described defendant's trailer and the items to be seized. The affidavit and search warrant also particularized the

place to be searched and the items to be seized. Accordingly, the affidavit and search warrant was not a “bare bones” affidavit, “devoid of facts.” *See Leon*, 468 U.S. at 926. As such, the affidavit, even assuming it did not establish probable cause, was nonetheless executed in good faith.

CONCLUSION

For the foregoing reasons, the State respectfully requests that defendant’s conviction be affirmed.

RESPECTFULLY SUBMITTED this 19th day of May, 2003

MARK L. SHURTLEFF
Attorney General

A handwritten signature in black ink, appearing to read "Brett J. DelPorto", written in a cursive style.

BRETT J. DELPORTO
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, this 19TH day of May, 2003 to:

A.W. LAURITZEN
15 East 600 North
P.O. Box 171
Logan, Utah 84321

Brett J. DelPorto

Addenda

Addendum A

77-23-205. Time for service — Officer may request assistance.

(1) The magistrate shall insert a direction in the warrant that it be served in the daytime, unless the affidavits or oral testimony state a reasonable cause to believe a search is necessary in the night to seize the property prior to it being concealed, destroyed, damaged, altered, or for other good reason; in which case he may insert a direction that it be served any time of the day or night. An officer may request other persons to assist him in conducting the search.

(2) The search warrant shall be served within ten days from the date of issuance. Any search warrant not executed within this time shall be void and shall be returned to the court or magistrate as not executed.

77-23-210. Force used in executing warrant — When notice of authority is required as a prerequisite.

When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may use such force as is reasonably necessary to enter:

(1) if, after notice of his authority and purpose, there is no response or he is not admitted with reasonable promptness; or

(2) without notice of his authority and purpose, if the magistrate issuing the warrant directs in the warrant that the officer need not give notice. The magistrate shall so direct only upon proof, under oath, that the object of the search may be quickly destroyed, disposed of, or secreted, or that physical harm may result to any person if notice were given.

Addendum B

A. W. Lauritzen
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Telephone: (435) 753-3391

IN THE FIRST JUDICIAL DISTRICT COURT
COUNTY OF RICH, STATE OF UTAH

STATE OF UTAH,
Plaintiff,

vs.

LAURA DABLE
Defendant,

FINDINGS AND ORDER
DENYING DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE

Case No. 00110027 FS
Judge Judkins

This matter came on for hearing before the Court on 25 June, 2001 at the hour of 10:00 A.M. and the Court having been fully briefed on the claims of the parties and having attended to argument of counsel having found the pertinent and relevant facts of the case as follows:

FACTS AS PRESENTED BY THE CASE

1. In April of 2000 Officer Dale Stacey spoke with a man named Threll Orton after he had been arrested by Wyoming authorities and while he was incarcerated in Evanston, Wyoming; the arrest was based on a charge of allegedly selling Methamphetamine and Marijuana. Mr. Orton informed Officer Stacey that he had gotten the Methamphetamine, which provided the basis for the Wyoming charge, from a woman in Randolph named Laura and a description of her residence was provided.

2. On June 6, 2000, Officer Stacey allegedly was contacted by Deputy Kim Clark from the Lincoln County, Wyoming Sheriff's Office. Officer Clark requested that officers in Randolph, Utah watch out for a woman named Laura Dable who had a trailer on West Park Street. Officer Clark allegedly told Officer Stacey that an informant had told them Defendant was going to Ogden to pick up some Marijuana and Methamphetamine to sell in Lincoln County and that he felt that they had enough information to make a traffic stop and search the vehicle. Officer Stacey stated in a June 14, 2000 report, "We did not see Dable in Randolph that evening.", referring to June 6, 2000.¹

3. On June 7, 2000, Officer Stacey allegedly received a telephone call from Officer Clark stating that Wyoming authorities had arrested Defendant, and that she had in her possession approximately 4 ounces of Marijuana and 8 grams of Methamphetamine. It was reported to Officer Stacey that Defendant admitted to Officer Kim Clark and Officer Jodie Gardner that she had bought the drugs in Ogden, and then stopped at her trailer in Randolph before proceeding to Wyoming where she was arrested.

4. Officer Stacey, relying on the above information, prepared an Affidavit, a copy of which is on file with the Court. Officer Stacey, without assistance from the Rich County Attorney presented the Affidavit and a proposed Search Warrant, which warrant is attached hereto as Exhibit B. to Judge Ross McKinnon to "look over", at around 6:00 p.m. on June 7, 2000.

¹ All of the above data came from the notes of Officer Stacey, provided to Defendant by the Rich County Attorney's office pursuant to a Discovery request served by Defendant.

5. Judge MdKinnon, accepted the Affidavit as prepared by Officer Dale Stacey without noting changes, deletions or additions and based thereon issued a Search Warrant for the trailer of Laura Dable at West Park Street in Randolph, Utah, authorizing a search for controlled substances, packaging material, or any type of paraphernalia used with illegal controlled substances. The search was conducted and was concluded at 22:35 hrs., sunset on June 7th, 2000 was at 20:59 hours.

The Court now concludes as a matter of law that:

6. The Statement and information in the Affidavit attributed to Law Enforcement Officers even if said officer or officers were not known to the Affiant need no other verification or other indicia of reliability and may be, taken as true by the magistrate simply because the informant was a Peace Officer.

7. The information provided in the Affidavit, without any weight given to it except as provided by the Wyoming officers was sufficient, to justify issuance of a Search Warrant given the supporting circumstances of this case.

8. The fact that Defendant was not mirandized prior to her purported statement to Wyoming Peace Officers does not require that the Magistrate refuse to consider said statements as providing part of the basis for issuance of a warrant or that the Court give less weight to said unmirandized statement.

9. Since the information provided in the Affidavit exclusive of that attributed to Threll Orton is sufficient to justify the issuance of a Search Warrant; the omission of certain facts surrounding his statement is not material to the evaluation of the Affidavit.

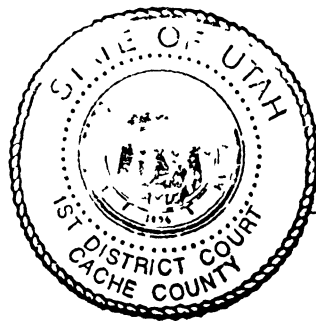
10. Since the search commenced during daylight hours, the unsupported direction that the Search Warrant could be executed day or night is harmless error.

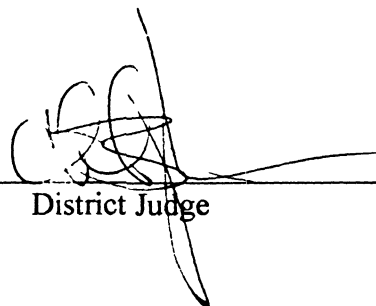
11. The fact that the Search Warrant was a form in blank and was incompletely filled out is harmless error.

12. The fact that the Affidavit contained unsupportable allegations, since those facts need not necessarily be found in order to support issuance of the Search Warrant, that inaccuracy does not bear on the adequacy of the Affidavit.

Based on the foregoing findings, the Motion to Suppress Evidence Seized pursuant to the Search Warrant issued in this case is denied.

Dated this 8 day of April 2002




District Judge

Addendum C

1 IN THE FIRST JUDICIAL DISTRICT COURT

2 RICH COUNTY, STATE OF UTAH

3 STATE OF UTAH,)

4 Plaintiff,)

5 vs.)

Case No. 001100027

) Transcript of Audio Tape.

6 LAURA DABLE,)

7 Defendant.)

8 -----
9 **Transcript of Motion to Suppress Hearing.**

Honorable Clint S. Judkins presiding.

10 First District Court Courthouse

11 Randolph, Utah

June 26, 2001

12 * * *

13 APPEARANCES:

14 For the Plaintiff:

JOE A. GREENLIEF

County Attorney

16 For the Defendant:

A. W. LAURITZEN

Attorney at Law

20 RODNEY M. FELSHAW

Registered Professional Reporter

21 First District Court

P. O. Box 873

22 Brigham City, UT 84302-0873

23
24 ORIGINAL
25

1 **THE COURT:** Take the case of State of Utah versus
2 Laura Dable. This is the time set for argument on
3 plaintiff's motion to -- excuse me. Defendant's motion to
4 suppress. Mr. Lauritzen.

5 **MR. LAURITZEN:** Yes, Your Honor. I have submitted
6 briefs in this matter. I think that this is a case that
7 probably stands out of my repertoire of practice before the
8 many courts in this land as an area where people simply just
9 don't take the Fourth Amendment seriously. I sometimes
10 wonder if the justice of the peace system, in their
11 instructions, don't tell the judges to go ahead and deal with
12 these things and expect that a higher court will take care of
13 it.

14 This is kind of shocking case in a way because there is
15 simply no basis on which one could credit the information
16 that was supplied to the justice with any aura of
17 credibility. Certainly the officer had some information two
18 months before from an individual who he didn't know from a
19 bale of hay, so to speak. He didn't do anything to
20 investigate that information, to verify anything that was
21 given to him there. In fact, he didn't really open an
22 investigation as far as is shown on the affidavits.

23 Thereafter, two months later, he was apprised of
24 something that involved my client and on that basis he dug
25 out this old information and provided it to the justice,

1 still not knowing anything about the credibility of the
2 individual who supplied the evidence or having given any
3 subsequent investigation to see if there was any basis for it
4 from his own knowledge. The justice apparently looked at the
5 matter rather uncritically and signed the warrant. I just
6 can't see how, under the circumstances, that this is an area
7 which we can allow to go on.

8 Then, the warrant itself is a blank. Some of the areas
9 were filled in and some of the areas were not. It seems to
10 me that that's a serious default in itself because it leaves
11 areas open for someone to modify. It isn't like the peace
12 officer who comes in and raises his right hand is necessarily
13 the one who serves the warrant. The want is to any peace
14 officer. Who knows whose hands those might pass through? So
15 the warrant itself seems to me to be very suspect.

16 I suggest that under the circumstances there was
17 certainly no need for a hurry. In fact, the defendant was
18 under arrest in another jurisdiction. The telephones were
19 available for a warrant. There was plenty of time to
20 transcribe all of these matters into the original without use
21 of a printed form so that the directions were clear and not
22 subject to abridgement or change.

23 Again, I'm not going to belabor it, but I've gone into
24 several areas. One of the things that I'm concerned about is
25 when the justice looked at the warrant he should have

1 probably noted that the individual had not been Mirandised.
2 That may very well have caused him to question it if that had
3 been -- if that information had been given him, that there
4 was -- had been no Miranda.

5 But more seriously, probably more seriously than any of
6 the things we see here in this particular warrant, is the
7 fact that there were some omissions of some very serious
8 matters which could very well have colored the thinking of
9 the magistrate. If he had known that the information that
10 was supplied to the officers, and which was narrated to him
11 in the affidavit, was taken from a person who was being held
12 under arrest un-Mirandised and who had a good deal to gain,
13 possibly, by providing information in exchange for his
14 freedom. None of this was noted on the affidavit.

15 It isn't like someone came up, a citizen came up and
16 volunteered and said I have some information as a concerned
17 citizen. I'm completely -- and in this particular case I
18 have no axe to grind. When we have a person who is under
19 duress, who is under arrest, I think that should certainly be
20 noted. I think that was a serious omission.

21 All in all, I suggest that the warrant was of such a
22 nature and was issued based on an affidavit with some
23 deficiencies to the point that in fact the search itself was
24 invalid and was not justified by the strictures of the Fourth
25 Amendment and any evidence seized thereby should be

1 suppressed.

2 **THE COURT:** Mr. Greenlief.

3 **MR. GREENLIEF:** I have not had the privilege of
4 reading Mr. Lauritzen's memo in response to plaintiff's
5 opposition of the defendant's motion to suppress. It says
6 that it was sent on the 16th day of May. I have no reason to
7 believe it was not. I just -- it's not in my file. I talked
8 to my secretary and she didn't know about it, hadn't heard of
9 it either, but I stand as the one at fault because it's my
10 office and I don't think it's the secretary's fault. I just
11 didn't get it in any event.

12 However, the main thing which Mr. Lauritzen speaks of
13 this morning, and also in his briefs and so forth, is that
14 the trouble with the information garnered from the defendant
15 in the Lincoln County prison -- or Lincoln County jail.
16 Maybe it was Uintah County. No, I believe it was -- okay, it
17 was Uintah County. It was down south of us here.

18 But the key to the entire thing is that the primary thing
19 that the officers were relying on is that there was
20 information from two very good -- well, two other officers in
21 Uintah County, Evanston, that the defendant had been stopped
22 and was at that time in jail in Uintah County in Evanston for
23 drug matters. That's the way I understand the case and
24 that's the key to it. These two officers knew what they had
25 found and that's pretty well set forth in the briefs and so

1 forth.

2 So the information of Therell was not necessary. It was
3 supportive, as was stated in our original response. And that
4 is all that it actually was. It was put first simply because
5 it happened first by a couple of months, but that was not the
6 actual thing.

7 It's my understanding that Mr. Orton was given his
8 Miranda again by -- well, no. He was not because he was not
9 given it because he wasn't charged. They were just talking
10 to him about this particular lady. He wasn't the focus of
11 any thought by the Rich County officers, so at that time it
12 wasn't necessary to give him the Miranda. He was in jail,
13 but it wasn't because of anything Rich County had done.

14 I believe on those bases we'll submit it.

15 **THE COURT:** Rebuttal?

16 **MR. LAURITZEN:** I'll submit it, Your Honor.

17 **THE COURT:** Well, one problem that you've got,
18 counsel, both of you is that nobody has given me a firm set
19 of facts in this case. Now, Mr. Lauritzen, you've alleged
20 certain facts in your original memorandum in support of the
21 petition to suppress. Since nobody objected to that I can
22 only assume that those facts are true and accurate.

23 The facts that the court finds in this case are that in
24 April of 2000, Officer Stacey spoke with a man named Therell
25 Orton after he'd been arrested by Wyoming authorities and

1 while incarcerated in Evanston, Wyoming. And that Officer
2 Stacey got in -- Mr. Orton informed Officer Stacey that he'd
3 gotten the methamphetamine, which provided the basis for the
4 Wyoming charge, from a woman in Randolph named Laura and a
5 description of the residence was provided.

6 Now, you've not disputed that, Mr. Greenlief. Is that
7 then correct?

8 **MR. GREENLIEF:** We've not disputed that he said
9 Laura.

10 **THE COURT:** But he didn't say Laura Dable?

11 **MR. GREENLIEF:** No, but there are no other Lauras in
12 Randolph, to my knowledge.

13 **THE COURT:** Well, how do we know that? Did the
14 affidavit state that? So the court finds that as a fact,
15 that --

16 **MR. GREENLIEF:** I believe, Your Honor, if I may.

17 **THE COURT:** Try me out.

18 **MR. GREENLIEF:** I believe he did give a description
19 of the trailer and of the outside of it and so forth. An
20 eight on the front, the color, where it was on the south
21 end -- excuse me, the north end of the trailer court on Park
22 Street.

23 **THE COURT:** I don't think there's any question, even
24 though that Mr. Lauritzen didn't put that in his statement of
25 facts, and which you didn't address in your memorandum, that

1 the trailer was described with specificity, but I think --
2 let's look at the affidavit that was submitted in support of
3 the request for the search warrant.

4 (Pause in the proceedings.)

5 **THE COURT:** Yes. It says Therell Orton told your
6 affiant that he was able to buy methamphetamine from Laura
7 Dable. Already, however, it's agreed that that was Laura,
8 not Laura Dable, the person living in the described trailer.
9 There is a description of the trailer. Dable was arrested in
10 Lincoln County, Wyoming on 6/7/00 for possession of
11 methamphetamine and some marijuana. Mr. Lauritzen, there's
12 no dispute as to that?

13 **MR. LAURITZEN:** No.

14 **THE COURT:** All right. The court further finds that
15 this Therell Orton did not say Laura Dable, he said, Laura,
16 but then went on with specificity and described a trailer,
17 which is the trailer which is the subject of the search.
18 That occurred in April of 2000. Then, on June 6th, 2000,
19 Officer Stacey was contacted by Deputy Kim Clark from Lincoln
20 County, Wyoming and Officer Clark told Officer Stacey that an
21 informant had told them the defendant was going to Ogden to
22 pick up some methamphetamine and marijuana to sell in Lincoln
23 County and apparently he was going to stop and search the
24 vehicle. Mr. Lauritzen, you'll agree that those are facts?

25 **MR. LAURITZEN:** They were in the affidavit.

1 **MR. GREENLIEF:** Also, I believe Jody Gardner was the
2 additional officer from Uintah County in Wyoming. In Lincoln
3 County, rather.

4 **THE COURT:** Kim Clark and an Officer Jody Gardner,
5 both officers in Lincoln County, Wyoming. Then your next
6 facts, Mr. Lauritzen, indicate, and the court will so find,
7 that there was a telephone conversation between Officer
8 Stacey and Officer Kim Clark and Officer Jody Gardner from
9 Wyoming, wherein they indicated that they had a confidential
10 informant who had indicated that the defendant was going to
11 pick up methamphetamine in Ogden. All right.

12 Then we'll go to number four of the facts set forth by
13 Mr. Lauritzen. Officer Stacey relied upon the above
14 information prepared in the affidavit, a copy of which is
15 attached hereto as exhibit A. Officer Stacey, without
16 assistance of Rich County, presented the affidavit with the
17 proposed search warrant.

18 Wait a minute. Let's go back to number three of Mr.
19 Lauritzen's alleged facts. It says it was reported to
20 Officer Stacey that the defendant admitted to Officer Kim
21 Clark and Officer Jody Gardner that she had bought the drugs
22 in Ogden and had stopped at her trailer in Randolph before
23 proceeding to Wyoming where she was arrested.

24 Mr. Lauritzen, what I would like you to do, I'm going to
25 direct your attention to a couple of things here and ask you

1 to give me your position on them.

2 MR. LAURITZEN: Okay.

3 THE COURT: That is, do you feel that the admission
4 made by your client on 6/7/00 to the Lincoln County officers
5 did not constitute sufficient probable cause to authorize the
6 issuance of a search warrant? And if so why not?

7 MR. LAURITZEN: Because, number one, she didn't say
8 that she picked up or left any drugs at the trailer.

9 THE COURT: But she did admit she was there?

10 MR. LAURITZEN: That she stopped there. The second
11 reason is because in fact she had told the officers that she
12 had picked up the drugs in Ogden. I mean, it isn't like she
13 told them she had picked them up at her trailer. She could
14 have stopped there for any reason, but she was nonspecific in
15 that.

16 And third, the officers themselves are not automatically
17 entitled to credit for reliability. The officers, assuming
18 they were officers, and I have no reason to believe they were
19 otherwise, still have got to be given some aura of
20 credibility. They just can't state that, state something and
21 take it at face value. There has to be something to back it
22 up. Probably the officers here in Rich County have in the
23 past dealt with these fellows. I don't know. They are
24 silent in that area and that concerns me.

25 It could have been green officers faced with their first

1 arrest; faced with not enough evidence themselves to make an
2 arrest and wanting to get some more evidence. They may have
3 had some reasons for their own to go ahead and try to supply
4 facts which would allow them to ultimately gain additional
5 evidence. I don't know that.

6 The other reason, of course, is that Ms. Dable herself
7 was under arrest at that time. There's no evidence before
8 this court at this time that she had been Mirandised.

9 **THE COURT:** Do you think that there's some case law
10 that says she has to be?

11 **MR. LAURITZEN:** I can't find any, but I suggest that
12 that's certainly a factor that the justice should take into
13 consideration, whether or not the person had been warned,
14 number one, of their right to remain silent which would give
15 them ease in dealing with the police. I think that's the
16 whole reason for the Miranda is to give them ease and not
17 feel threatened, realizing that they have certain rights.
18 And with that in mind they might be more likely, number one,
19 to speak truthfully or, number two, not to speak at all.

20 Anyway, those are the reasons I give the court.

21 **THE COURT:** Okay. I'll direct your attention to
22 another deficiency in the search warrant and hear your
23 position on that. That is the, and this causes some concern
24 to the court, the search warrant says you are therefore
25 commanded to make immediate search in the day time, any time

1 day or night, of the person of the vehicles described as, and
2 then it goes on to say one small RV trailer, single axle, and
3 describes the premises.

4 Where it says in the day time, any time day or night, was
5 never marked, crossed off, et cetera. Section 77-23-205 says
6 the magistrate shall insert a direction in the warrant that
7 it is to be served in the day time, unless the affidavit or
8 oral testimony states a reasonable cause to believe that a
9 search is necessary in the night to seize the property prior
10 to it being concealed, destroyed, damaged, altered or for
11 other good reason, in which case he may insert a direction
12 that it be served any time of the day or night. And the
13 officer may request other persons to assist in conducting the
14 search.

15 This search, as I understand it, and again the facts as
16 alleged by Mr. Greenlief in his memorandum in opposition
17 thereto, indicates that this search began at 6:32 p.m. Now,
18 at 6:32 p.m. on June 7th of the year 2001, is that day time
19 or night?

20 **MR. LAURITZEN:** That was in the day time. I'll
21 agree with that.

22 **THE COURT:** All right. Anything else, Mr.
23 Lauritzen, you'd like to bring to my attention?

24 **MR. LAURITZEN:** No.

25 **THE COURT:** I'm going to deny the motion to suppress

1 and in so doing indicate the following. I've made certain
2 findings here. I'm going to find that the information
3 provided by the peace officers out of Lincoln County, Wyoming
4 was such that it did not require any more verification of a
5 reliable witness other than being peace officers, because
6 they just relaid information that she'd picked up drugs in
7 Ogden and told them that she'd stopped in -- at her residence
8 or this trailer as described in Randolph, and then down to
9 Wyoming.

10 If the information had of required some sort of
11 subjective reasoning on behalf of the witness, that is the
12 person providing the information, then I think the police
13 officers should have gone into it further. But the mere fact
14 that the police officers were conveying a confession and the
15 facts of that confession, and the fact that they were police
16 officers, and I don't have the case directly at hand, but
17 there is a case which indicates that under certain
18 circumstances the mere fact that it is a police officer
19 relaying the information, that police officer can be assumed
20 to be a reliable witness unless there's some reason why it
21 should not be. In this case he is just relaying that. I
22 find that's the reason why additional information was not
23 required of those witnesses.

24 I find that the time frame, from the time that this Orton
25 provided the information being nearly two months, in this

1 particular case is not determinative of striking a search
2 warrant. Normally stale information is not a basis for the
3 issuance of a search warrant in and of itself. However,
4 stale information may be used as background information only.
5 And in this case that background information, even though it
6 took place a couple of months before, or at least the
7 information was provided a couple of months before, gave a
8 basis for this during the course of the history, sometime or
9 another, provided a place for this type of activity to take
10 place.

11 One thing I will note that bothers me, that is that the
12 affidavit does not link up Laura Dable with the name Laura
13 and the residence. I think they can be assumed, but the four
14 concerns of the document have to provide the information for
15 the magistrate to do that. Sheriff, you did not say to the
16 magistrate, magistrate, they said Laura. I know Laura Dable
17 and they described the residence and I know Laura Dable lives
18 at that residence. That's missing in this and the court
19 acknowledge that. Nevertheless, taking the totality of the
20 circumstances, I still will not grant the motion to suppress.

21 There's another thing that should be included in this and
22 that is that the court finds that the -- from the facts
23 before it at this time, and whether it actually occurred or
24 not, but for the purposes of rendering this decision, Mr.
25 Lauritzen, I find that the defendant was not Mirandised by

1 the Lincoln County sheriff's office when she provided that
2 information. At least there's nothing in the document which
3 indicates that. Mr. Lauritzen has indicated that he's not
4 been able to find any case law which would require that she
5 be Mirandised. That may be something that the appellate
6 court should look at to give a basis for that, for them to
7 take a look at it. The court will find, though, for today's
8 purpose I cannot find that she was Mirandised, but I find
9 that that doesn't make a difference for the purpose of this
10 search warrant.

11 Now, also, the order should include that even though the
12 search warrant itself does not indicate -- it troubles me
13 that the search warrant itself does not indicate that it was
14 to be served day time, night time or at any time. Because it
15 was served during the day time, the court does find that that
16 is not a basis to strike. If it was served in the evening,
17 then the court -- the decision of the court here today may be
18 something different. But where it was not served in the
19 evening, I find that that made no difference whatever to the
20 search warrant.

21 Now, who would like to prepare the order?

22 **MR. LAURITZEN:** I will.

23 **THE COURT:** Mr. Lauritzen --

24 **MR. GREENLIEF:** I was going to suggest we kind of
25 work on it together.

1 **MR. LAURITZEN:** That's fine.

2 **THE COURT:** You can do whatever. What I've done is
3 make certain findings. For example, the not Mirandising the
4 defendant, Mr. Lauritzen, you very well may want to put that
5 together in case you want to take that up on appeal. I think
6 I've given you sufficient information for an appellate court
7 to review that.

8 I think it's often been said that the appellate court is
9 last, but they are after me. I have to make certain
10 decisions and give them a basis for review. But at this
11 point the court will deny the motion to suppress.

12 With that, do we need to set this matter for trial?

13 **MR. LAURITZEN:** Yes, please.

14 **THE COURT:** Do you want a one day jury trial?

15 **MR. LAURITZEN:** I think that should be sufficient?

16 **THE COURT:** Any need to expedite it, Mr. Lauritzen?

17 **MR. LAURITZEN:** No.

18 **THE COURT:** Becky, what do we have about September?

19 (Pause in the proceedings.)

20 **THE COURT:** Mr. Lauritzen, how does the 4th of
21 October appear?

22 **MR. LAURITZEN:** That's fine.

23 **THE COURT:** Ms. Dable, you have the right to a
24 speedy disposition in this matter. This has been pending for
25 some time. What we've just set here is it will pend until

1 October. Are you willing to waive your right for a speedy
2 disposition until that time?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Very well. All right. Anything else to
5 address as relates to Ms. Dable?

6 **MR. LAURITZEN:** Not that I can think of.

7 **THE COURT:** Any other matters that need to come to
8 the court's attention today?

9 **MR. LAURITZEN:** None that I know of.

10 **MR. GREENLIEF:** No.

11 **THE COURT:** Hearing none, we'll be in recess.

12 (Hearing concluded.)

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C E R T I F I C A T E

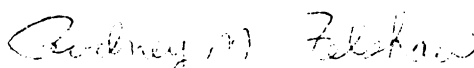
THIS IS TO CERTIFY that the audio taped hearing was transcribed by me, Rodney M. Felshaw, a Certified Court Reporter and Certified Court Tape Transcriber in and for the State of Utah, residing at Brigham City, Utah.

That a full, true and correct transcription of the hearing, to the best of my ability, is set forth in the pages numbered 2 to 17, inclusive.

I further certify that the original transcript was filed with the Court Clerk, First District Court, Rich County, Randolph, Utah.

I also certify that I am not associated with any of the parties to said matter and that I am not interested in the event thereof.

Witness my hand this 21st day of October, 2002.



Rodney M. Felshaw, C.S.R., R.P.R.

Addendum D

DISTRICT COURT, STATE OF UTAH

RICH COUNTY

THE STATE OF UTAH,

Plaintiff,

Defendant(s)

AFFIDAVIT FOR SEARCH WARRANT

Case No. 00-0381

AFFIDAVIT

RICH COUNTY

STATE OF UTAH

ss

Affiant, being first duly sworn, states on oath that:

1. OFFICER. I am a peace officer in the State of Utah employed for 7 1/2 years by Rich County Sheriff's Office.

2. PROPERTY. The property or evidence for which a search warrant is sought is described as follows: Illegal Controlled substances, paraphernalia, or packaging materials used for Illegal controlled substances.

3. LOCATION. I have probable cause to believe this property or evidence is located on the person ☒ vehicle ☒ premise (check those that apply) described as: (the description must be so specific that the location could be found by one not knowing where it is). A white trailer with Blue Trim located just East of 95 West Park street in Randolph. There is a visible 8 on the front of the trailer and a Tip out on the North East side. The trailer is running North and South and is surrounded by a fence. The fence is constructed with green steel posts and has square mesh wiring. There is a Blue tavel with a flower design tied to the front fence and some wood stacked by the front fence. There is lawn furniture East of the trailer on the same property.
There is also a small RV trailer with a single axle located East of the trailer on the same property. The trailer is white and is covered by a Blue

Affidavit for Search Warrant, page 2

4. STATUTORY GROUNDS. I have probable cause to believe this property or evidence (check those that apply and fill in blank with name of crime).

☒ was unlawfully acquired or is unlawfully possessed

☒ has been used or is possessed for the purpose of being used to commit or conceal the commission of the offense of Selling illegal controlled substances, or using illegal substances.

5. ATTACHMENTS. The following attachments are incorporated in this affidavit as though set forth herein: (list written informants' statements, documentary evidence and other exhibits)

Exhibit 1 -

Exhibit 2 -

Exhibit 3 -

Exhibit 4 -

Exhibit 5 -

6. NIGHT SEARCH. I have reasonable cause to believe a search is necessary in the night as follows: (state why property may be concealed, damaged, altered or other good reason).

7. NO KNOCK. I have the following evidence which allows the search to be conducted without notice of authority and purpose: (state why the object of the search may be quickly destroyed, disposed of or secreted or why physical harm may result to a person if notice is given).

AFFIDAVIT for Search Warrant, page 3

8. ANONYMOUS INFORMANTS. The following are designations of anonymous informants:

Their identity is withheld because (state why the informant would be endangered or his usefulness destroyed if name was stated)

AFFIDAVIT for Search Warrant, page 4

9. RELIABILITY. I believe the informants named herein to be reliable for these reasons: (check those that apply)

☒ the following informants made statements against their penal interest: *Threll Vern Orton*

☐ the following informants are citizen informers who have no interest in this matter: (also state which ones are known to you personally)

☒ the following informants are peace officers with the departments noted: *Lincoln County Sheriff's Deputies - Kim Clark and Jody Gardner.*

☒ the following informants are reliable because (state the name of each informant and facts corroborating his statement or previous reliable statements) *Threll Orton told your affiant that he was able to buy methamphetamine from Laura Dible, the person living in the described trailer. Dible was arrested in Lincoln County Wyoming on 6-7-00 for possession of Methamphetamine and Marijuana.*

AFFIDAVIT for Search Warrant, page 5

10. PROBABLE CAUSE. The following facts establish that probable cause exists for the issuance of a search warrant: (state the specific facts of the case, state how they were observed, state the date they were observed and the date they were reported to affiant)

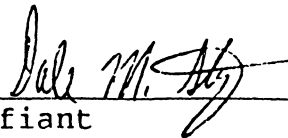
Threll Orton informed your affiant that he had bought Methamphetamine from Laura Dable at the trailer described in this affidavit on at least two occasions.

On 6-7-00 I spoke with Deputies Kim Clark and Jody Gantner from the Lincoln County Sheriff's Office. They indicated that they were working on a drug case, and that a confidential informant told them that Laura Dable was planning on picking up some drugs in Ogden on 6-6-00 and bringing them into Lincoln County to sell. On 6-7-00, Dable was stopped and her vehicle searched. The officers located approximately 4 ounces of Marijuana and 4 grams of methamphetamine.

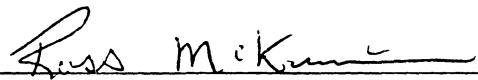
Dable informed the officers that she had bought the drugs in Ogden on 6-6-00 and had stopped at her residence in Randolph for several hours before going on up to Lincoln County. Your affiant feels there is probable cause to believe some of the drugs bought in Ogden were left in the trailer because there have allegedly been sales made from the trailer to people in this county.

AFFIDAVIT for Search Warrant, page 6.

DATE SIGNED: June 7, 2000 TIME SIGNED: 1810


Affiant

Subscribed and sworn to before me this 7 day of June, ²⁰⁰⁰~~1997~~


Judge

Addendum E

Incident: Search Warrant.

Location: Randolph, UT 84064

Other Information: On June 7, 2000, at around 3:00 P.M., I spoke Deputy Kim Clark from the Lincoln County Wyoming Sheriff's Office. He had also spoken to me the day before about a woman named Laura Dable. She has a trailer on West Park Street in Randolph.

On June 6, Officer Clark asked me if our officers could watch for Dable. He said that they had an informant that told them Dable was going to come in to pick up some Marijuana and Methamphetamine to sell in Lincoln County. He felt that they had enough information to make a traffic stop and search the vehicle. We did not see Dable in Randolph that evening.

On June 7, Officer Clark called to let me know that they had arrested Laura Dable. At the time of the arrest, she had approximately 4 ounces of Marijuana and 8 grams of Methamphetamine. They had also found some pay stubs on her that listed some clients in Randolph. Specifically John Eddie Cooper. Dable told Officer Kim Clark and Jodie Gardner that she had bought the drugs in Ogden, and then stopped at her trailer in Randolph before proceeding to Wyoming.

In April, a man named Threll Orton was arrested in Evanston, Wyoming, for selling Methamphetamine and Marijuana. After the arrest was made by the Wyoming Officers, Officer Wayne Weston and I did a search on Orton's house. We found some paraphernalia and approximately 14 ounces of Marijuana. Officer Weston and I spoke to him while he was still in jail. He told me that he had gotten the Methamphetamine he sold from a woman in Randolph named Laura. He also described where she lived. The description fit Laura Dable's trailer on West Park Street. This information seemed consistent with the information I was receiving from Officers Kim Clark and Jodie Gardner. At that time I decided to write a Search Warrant for Dable's trailer in Randolph.

Because of the lateness of the hour (around 6:00 p.m.), I asked Justice Judge Ross McKinnon to look over the warrant. I felt there was a good chance that Dable would contact some of the people she had been dealing with and they would remove the evidence from the trailer if we didn't find it first. Judge McKinnon looked over and signed the warrant.

The warrant was signed, Officer Mark Lee and I searched the trailer. We recovered 19 items. The list is as follows:

1. A baggie with a razor blade and residue from under the living room coffee table.

2. A white plastic tube with residue from under the living room coffee table.

3. Some green organic material (suspected Marijuana) from the glass top of the living room coffee table.

4. Another white plastic tube with residue inside. It was found on the floor of the living room coffee table.